COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 303 of 2002
(Old No. 112 of 2000)

Oriental Assurance Company Ltd. …… **Appellant.**

Versus

Smt. Usha Rani & others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 30 of the Workmen's Compensation Act, 1923 ***(in short the Act)*** against the judgment and Order, dated 14-08-1997, passed in Case No. W.C.A. 10 of 1998, Smt. Usha Rani & others Vs. Sri Avinash Kumar and another, by the Workmen's Compensation Commissioner & Asstt. Labour Commissioner U.P. Rishikesh, ***(hereinafter referred to as the Commissioner),*** whereby the learned Commissioner has awarded a sum of Rs. 2,02,300/- (including interest as mentioned in the impugned order) in favour of the claimant and against the Opposite Party No.2-appellant with a direction to deposit the entire amount within one month, failing which recovery certificate shall be issued and simple interest @ 12% shall also be levied. Aggrieved, the Insurance Company-appellant has come up in appeal with a prayer to set aside the impugned judgment and award and has assailed the impugned judgment and award contending that the judgment and award is not based on evidence on record and is illegal and substantial questions of law to the effect whether in the present case the amount is payable under the Act, whether any amount of compensation would be payable under the Act for the death of the driver of the vehicle involved the accident having not been caused in the course of employment and whether compensation would be payable when no accident had taken place with vehicle no. UP 7C-2985.

Brief facts giving rise to the present appeal are that the claimants Usha Rani and others preferred claim petition under the Act before the learned Commissioner alleging that Ajay (the deceased) was employed under the employment of O.P. No.1 Avinash Kumar and he had gone from Dehradun to Saharanpur with passengers on 27.3.1998. At about 2 p.m., when he reached near the bridge at Sabji Mandi, all of a sudden, he became ill and collapsed inside the taxi. The deceased was aged 35 years and he was getting salary worth Rs. 3,000/- per month. The employer was given information of the death, but no compensation has been given, hence the petition. Subsequently, by way of amendment and order dated 21.8.98, the O.P.No.2-appellant has been arrayed as party to the proceedings, when the claimants came to know that the vehicle in question was insured with the company.

The O.P.No.1 filed his written statement. He has admitted that the deceased was employed under his employment as alleged, but has denied rest of the allegations. It has been asserted that the deceased had died a normal death. The deceased was getting Rs.2,000/- per month as salary in addition he was being paid Rs. 50/- as daily allowance. The vehicle in question was duly insured with the appellant. O.P.No.2-appellant contested the claim petition by filing its written statement. Insurance of the vehicle has been admitted. Survey was got conducted and it was found that it was a natural death in the present case, therefore, the petition is not maintainable under the Act and the company is not liable to pay compensation.

With the consent of both the parties, the learned Tribunal has framed only one Issue for determination to the effect whether the claimants are entitled to get compensation and penalty from the opposite parties, if so, to what extent and from whom. After considering the entire material on record, the learned Commissioner came to the conclusion that it has been proved on

record that the deceased has died in the course of his employment, therefore, the dependents of the deceased are entitled to get compensation under the Act. The learned Commissioner finding the income of the deceased as Rs. 2000/- per month and age to be 35 years, assessed the amount of compensation for the death of the deceased at Rs. 1,97,060/- and further awarded Rs. 5,240/- towards interest for a period of 2 months, 20 days, i.e. from the date of accident till date of filing of claim petition and ultimately passed the impugned order, as mentioned earlier.

We have heard learned counsel for the appellant, Sri T.A.Khan as well as learned counsel for the claimant-respondents, Sri S.N.Babulkar, Senior Advocate, and have carefully gone through the entire material on record including the impugned judgment and award.

The only point pressed before us in appeal on behalf of the appellant is that the deceased had died a natural death and it was not a case of motor accident involving use of Taxi No. UP 7C/2985, therefore, no compensation should have been awarded against the insurance company. Having considered the entire material on record, we find that it is not disputed that the deceased Ajay was employed under the employment of O.P.No.-1 respondent no.5 as driver of the vehicle in question. It is significant to mention here that the appellant despite sufficient opportunity given by the learned Commissioner has not adduced any oral or documentary evidence. The surveyor, whose investigation report has been relief by the appellant, was the most important witness to support the contention of the appellant that the deceased had died a natural death and not during the course of his employment; but even this witness was not even produced by the appellant for the reasons best known to it. It is the definite case of the claimant-respondents that the deceased had died in the course of his employment and that too inside the vehicle of which he was employed a driver. We can take note of the fact that the appellant has not even pressed its

contention that deceased has not died in the course of his employment before the learned Commissioner, at the time of framing of Issue in the case. It has been proved by the evidence of Anand Nath, son of late Ramnath, who has appeared in the witness box from the side of the claimant-respondents. He has supported the case of the claimant on all material points. Post Mortem of the dead body has also been conducted in the present case. Considering all the circumstances of the case and totality of evidence on record, it is sufficiently proved that the deceased died in the course of his employment as driver and his death has taken place inside the Taxi. The appellant has failed to controvert this fact before the court below by any reliable evidence. In our opinion the finding of the leaned Tribunal that the circumstances the deceased was found dead can safely be taken as accident in the course of employment. The learned counsel for the appellant failed to indicate any iota of evidence, led by the appellant, so as to lead us to take a different view, particularly when the investigator of the appellant has not been produced in the witness box to substantiate his alleged survey report. This is very strong circumstance, which goes against the case of the appellant. The entire defence of the appellant has been based on the so-called report of the surveyor. Nothing has been brought on record by the appellant to show that the deceased has not died in the course of employment. The learned Commissioner has elaborately discussed the entire evidence on record and on careful perusal of the entire record, we find nothing favourable to the stand taken by the Insurance Company in appeal. There is nothing on record to substantiate the substantial questions of law framed in the memo of appeal.

In the result, the appeal fails on merits. The judgment and award, under appeal, deserves to be upheld.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs.

The amount in deposit with this Court shall be remitted to the Commissioner concerned/Asstt. Labour Commissioner, Rishikesh. The claimant-respondents shall be at liberty to withdraw the amount.

(B.S. Verma, J.) **(P.C. Verma, J.)**

26-08-2004
RCP